

REMARKS/ARGUMENTS

The Examiner's non-final Office Action of August 2, 2006 has been received and considered. Claims 1, 2, 4, 6, 7, 9, 12-23, 25, 46-52, and 73-78 are pending in the application. The undersigned thanks the Examiner for the telephone interview held relative to this case on July 28, 2006, and acknowledges that the amendment given in the interview and presented with the subject Office Action, have been entered, and that the claim rejections in view of Bunce, et al and Patel et al, as detailed in the August 5, 2005 Office Action, have been withdrawn.

Claims 1, 2, 4, 6, 7, 9, 12-23, 25, 46-52 and 73-78 are now rejected under 35 U.S.C. 102(b) as being anticipated by a newly cited reference, i.e., U.S. Patent No. 6,663,831 to Konecke ("Konecke"). For the reasons discussed below, Applicant submits that the rejection of these claims should be reconsidered and withdrawn.

In the Office Action, the Examiner, comparing the pending claims to the disclosure of Konecke, provides, "The claimed "holding portion" has been read on the device (20) and that claimed "retaining portion" has been read on the roller heads (70,70A) that have a first size (70) and a second size (70A). The claimed "expandable collector member" has been read on the absorbent material (100) and the "discharge member" has been read on the core (80). The claimed "blocking portion" has been read on cap (40). Applicant submits, however, that even with such a reading of the present disclosure, Konecke fails to teach each and every element of the claimed invention.

First, claims 1 and 73 recite the limitation of "the retaining portion includes a discharge member spaced from the holding portion second end." To the contrary, the defined retaining portion of Konecke (70,70A) depicted in Fig. 6A of Konecke does not include the defined discharge member (80) of Konecke. Instead, in Konecke the defined retaining portion (70,70A) of and the defined discharge member (80) of are separated by the absorbent material pad (100), and are thus separate and apart from one another. Konecke fails to teach, *inter alia*, a retaining portion that includes a discharge member as set forth in independent claim 1.

Second, claims 1, 46, 73, and 77 recite the limitation of a "retaining portion coupled to the holding portion second end and selectively configurable between at least an extended size and a contracted size." As noted above, the Examiner has read the claimed retaining

portion on the roller heads (70,70A) depicted in Fig. 6A of Konecke, and the claimed holding portion on the entire device (20) of Konecke. First, Applicant submits that the Examiner's reading of Konecke necessarily prevents the defined retaining portion (70,70A) of Konecke to be coupled to the defined holding portion (20) of Konecke, since the defined retaining portion (70,70A) is defined as being part of the defined holding portion (20) of Konecke. Moreover, Konecke discloses only that the defined retaining portion (70,70A, i.e., the roller heads) may be of unequal size relative to another. It is clear from a plain reading of Konecke that the size of each individual defined retaining portion (70,70A) of Konecke is not itself selectively configurable, as recited in independent claims 1, 46, 73 and 77.

Third, claims 1 and 73 recite the limitation of "wherein a sufficient amount of sample is collected for assay when the collector member second collection size is substantially equal to the retaining portion extended size." Not only are is the size of the defined retaining members (70,70A) of Konecke not selectively configurable, there is also no teaching or suggestion within Konecke that "a sufficient sample is collected for assay when the collector member second collection size is substantially equal to the retaining portion extended size," as recited in claims 1 and 73.

Fourth, claims 1 and 73 recite the limitation "wherein the retaining portion includes a discharge member spaced from the holding portion second end." As noted above, the Examiner has read the claimed "holding portion" on the entire device (20) of Konecke, including core (80) on which the claimed discharge member has been read. Since the defined discharge member (80) of Konecke is part of the overall defined holding device (20) of Konecke as a whole, it cannot be said that Konecke discloses a discharge member spaced from the holding portion second end, since the defined discharge member (80) of Konecke and the defined holding member (20) are one and the same.

Fifth, independent claims 1, 46, and 73 recite the limitation of "a retaining portion coupled to the holding portion second end." As discussed above, the defined holding portion of Konecke (20) is the entire device (20), taken as a whole, which includes the defined retaining portion (70,70A) of Konecke. According to the Examiner's interpretation of Konecke, the retaining portion of Konecke (70,70A) is not a separate piece of the holding portion (20), but rather a part of it. Thus, similar to the above, the Examiner's suggestion that that the defined retaining portion (70,70A) of Konecke is coupled to the defined holding

portion (20) is a non sequitur. The defined retaining portion of Konecke (70,70A) cannot be said to be coupled to the defined holding portion (20) of Konecke if the defined retaining portion (70,70A) is itself part of the defined holding portion (20). In any event, it is clear from Fig. 1, for example, that there is nothing coupled to either end of the defined holding portion (20) of Konecke.

Six, further with respect to the claimed “discharge member,” Applicant notes that independent claims 1 and 73 recite the limitation of “wherein the retaining portion is moved from an extended size to a contracted size, a sample portion sufficient for assay is discharged from the discharge member.” Applicant notes that the defined discharge member (80) of Konecke is merely the “core” of the test device (20) into which the sample contained in the absorbent collection material pad (100) is pressed. (See, e.g., Konecke, Col. 7, lines 1-6). Thus, the defined discharge member (80) of Konecke does not discharge the sample but, rather, receives it. Konecke fails to teach or suggest the claimed limitation of “wherein the retaining portion is moved from an extended size to a contracted size, a sample portion sufficient for assay is discharged from the discharge member,” as recited in claims 1 and 73.

Seventh, claim 46 recites the limitation, “a blocking portion disposed on the retaining portion, the blocking portion being spaced from the holding portion second end when the retaining portion is configured in the extended size and the blocking portion being engaged with the holding portion second end when the retaining portion is configured in the sample retaining size.” As noted above, the Examiner has read the claimed “blocking portion” on the cap (40) of Konecke. Similar to that discussed above, it is a non sequitur to state that the defined blocking portion (40) of Konecke is spaced from the defined holding portion (20) of Konecke, because as interpreted by the Examiner, the defined blocking portion (40) is part of the defined holding portion (20). It is clear, therefore, that Konecke does not teach the claimed limitation of claim 46 of a device having “a blocking portion being spaced from the holding portion second end when the retaining portion is configured in the extended size and the blocking portion being engaged with the holding portion second end when the retaining portion is configured in the sample retaining size, as recited in claim 46.

Eighth, claim 77 recites the limitation of the “retaining portion includes a wall spaced at a first length from the holding portion second end when the retaining portion is in the expanded size and the wall is spaced at a second length from the holding portion second end

when the retaining portion is in the contracted size.” Again, Applicant submits that the defined retaining portion (70,70A) of Konecke is itself part of the defined holding portion (20), such that it is not possible for the retaining portion (70,70A) of Konecke to be spaced apart from the defined holding portion (70,70A). Nevertheless, even if there were an interpretation of Konecke that would support the defined retaining portion (70,70A) of Konecke as being separate from the defined holding portion (20), Konecke does not disclose the claimed wall, nor a wall spaced at a first length from the holding portion second end when the retaining portion is in the expanded size and the wall is spaced at a second length from the holding portion second end when the retaining portion is in the contracted size. As noted above, the defined retaining portion (70,70A) of Konecke is not selectively configurable, and the distance of the end of the defined holding portion (20) of Konecke from the defined retaining portion (70,70A) of Konecke is in no way impacted by size of the defined retaining portion (70,70A).

Lastly, claim 78 recites the limitation, “the retaining portion is an elongate member having a proximal end adjacent the holding portion second end and a perforated disc-like piece formed at the distal end, the perforated disc-like piece comprising the wall, and wherein the collector member is made from a fluid absorbing material that is movable along the elongate member when the collector has a first collection size.” In addition to the foregoing arguments relative to the defined retaining portion (70,70A) of Konecke being a part of the defined holding portion (20), the defined retaining portion (70,70A) of Konecke, in any is not an elongate member having a proximal end adjacent the holding portion second end and a perforated disc-like piece, as set forth in claim 78.

For the foregoing reasons, Applicant submits that Konecke fails to disclose each and every element of claims 1, 46, 73, 78, and the claims dependent thereon, as required for a proper rejection under 35 U.S.C. 102(b). Accordingly, Applicant submits that claims 1, 2, 4, 6, 7, 9, 12-23, 25, 46-52, and 73-78 as herein presented are in condition for allowance. An early Notice of Allowance is solicited.

Respectfully submitted,

Dated: January 3, 2007

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